money, even though in so doing it would probably go beyond the doctrine of *Savage* v. *Mason*, 3 Cush. 500. There, the covenant was to pay for the privilege of using a party wall, and was connected, it would seem, with the enjoyment of an easement, in this case, a right to retain the wall on land of the covenantor and his assigns.

WAIVER OF CONSTITUTIONAL RIGHT TO TWELVE JURORS. — The Supreme Court of New Mexico has just decided that the United States constitutional guaranty of a jury trial in all criminal prosecutions cannot be waived by one indicted for a felony, so as to make valid a trial by eleven jurors. *Territory* v. *Ortiz*, 42 Pac. Rep. 87.

Most of the American State constitutions contain similar guaranties, which have been generally interpreted to prohibit statutes compelling the defendant to submit to trial by any number of jurors less than twelve. As regards the defendant's ability to waive this right, the authorities are divided. Although in minor offences the defendant is generally allowed to waive the right even in the absence of statutes permitting it, he is not allowed at common law to waive the right in case of felonies; and statutes permitting waiver of the right in such case are in some States held unconstitutional. Nowhere is waiver of this right permitted in capital cases.

One argument suggested against allowing the defendant to waive his constitutional right to a trial by a full panel has been that the State is concerned to preserve the lives and liberties of its citizens, and therefore it will not suffer them to consent to a form of procedure that may lessen their chances of acquittal. *Cancemi* v. *People*, 18 N. Y. 128. But in *Comm.* v. *Dailey*, 12 Cush. 80, Chief Justice Shaw points out that in any particular case the defendant's chances of success in a present trial with eleven jurors may be greater than in a future one with twelve, as where certain evidence is now available that may not be in the future; and that the defendant and his counsel can be safely trusted not to prejudice his interests. Judge Cooley contends, however, upon better ground, that a tribunal of less than twelve jurors is unknown to the law; that it amounts merely to a species of arbitration to decide whether the accused has been guilty of an offence against the State. Cooley, Const. Lim. (6th ed.) 391. The finding of such a tribunal, not constituted according to law, is of course shorn of legal effect. Bulwarked by this reasoning, the result of the principal case and kindred decisions seems fairly impregnable.

THE NATURE OF RAILROAD TICKETS. — Two recent cases in minor courts bring up interesting questions concerning the nature of railroad tickets. In *Evansville & T. H. R. R. Co.* v. *Cates*, 41 N. E. Rep. 712, the Appellate Court of Indiana held that where a passenger demands and pays for a ticket to A, and by a mistake of the ticket agent is given a ticket to B only, with which he enters the train without noticing the error, he has a right to ride to A on making proper explanation to the conductor; and can recover from the company for ejection by the conductor at B. This case is not without support (see *Georgia R. R., &c., Co.* v. *Dougherty*, 86 Ga. 744; 3 Wood on Railroads, § 349); but the weight of authority is against it, and it seems to have no foundation in principle. It involves a misconception of the true character of a railroad ticket. If it were true that the